

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

LOUISIANA HEALTH SERVICE & INDEMNITY  
COMPANY D/B/A BLUE CROSS AND BLUE SHIELD  
OF LOUISIANA, and HMO LOUISIANA, INC., on  
behalf of themselves and all others similarly situated,

Plaintiffs,

v.

JANSSEN BIOTECH, INC., JANSSEN ONCOLOGY,  
INC., JANSSEN RESEARCH & DEVELOPMENT,  
LLC, and BTG INTERNATIONAL LIMITED,

Defendants.

Case No. 1:19-cv-00474-LMB-  
JFA

MAYOR AND CITY COUNCIL OF BALTIMORE, on  
behalf of itself and all others similarly situated,

Plaintiffs,

v.

JANSSEN BIOTECH, INC., JANSSEN ONCOLOGY,  
INC., JANSSEN RESEARCH & DEVELOPMENT,  
LLC, and BTG INTERNATIONAL LIMITED,

Defendants.

Case No. 1:19-cv-00605-LMB-  
JFA

IRON WORKERS DISTRICT COUNCIL  
(PHILADELPHIA and VICINITY) HEALTH BENEFIT  
PLAN, on behalf of itself and all others similarly situated,

Plaintiffs,

v.

JANSSEN BIOTECH, INC., JANSSEN ONCOLOGY,  
INC., JANSSEN RESEARCH & DEVELOPMENT,  
LLC, and BTG INTERNATIONAL LIMITED,

Defendants.

Case No. 1:19-cv-00642-LMB-  
MSN

KENTUCKY LABORERS COUNCIL HEALTH AND  
WELFARE FUND, on behalf of itself and all others  
similarly situated,

Plaintiffs,

v.

JANSSEN BIOTECH, INC., JANSSEN ONCOLOGY,  
INC., JANSSEN RESEARCH & DEVELOPMENT,  
LLC, and BTG INTERNATIONAL LIMITED,

Defendants.

Case No. 1:19-cv-00658-LMB-  
TCB

**DEFENDANTS' JOINT RESPONSE TO PLAINTIFFS' JOINT MOTION FOR  
CONSOLIDATION (Dkt. No. 35)**

Defendants Janssen Biotech, Inc., Janssen Oncology, Inc., and Janssen Research & Development, LLC (collectively, "Janssen"), along with Defendant BTG International Limited ("BTG" and collectively with Janssen, "Defendants"), respectfully submit this response to the Motion for Consolidation (Dkt. No. 35) filed by Plaintiffs Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana and HMO Louisiana (Case No. 1:19-cv-00474), the Mayor and City Council of Baltimore (Case No. 1:19-cv-00605), Iron Workers District Council (Philadelphia and Vicinity) Health Benefit Plan (Case No. 1:19-cv-00642), and Kentucky Laborers District Council Health and Welfare Fund (Case No. 1:19-cv-00658) (collectively, "Plaintiffs").

Defendants agree that these four, nearly identical, class action cases should be consolidated, but only within the proper District. Defendants' motion to transfer Case No. 1:19-cv-00474, filed by Plaintiffs Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana and HMO Louisiana, to the United States District Court for the District of New Jersey, *see* Dkt. No. 30, is pending and briefing is not yet complete. Defendants

did not simultaneously file similar motions in the three additional cases because they had not been served in those cases at the time. Defendants now request the Court to consider their motion to transfer in Case No. 1:19-cv-00474 as applicable also to the three additional cases.

As explained in the transfer motion, Plaintiffs' complaints all allege that Defendants pursued sham patent infringement litigation in the District of New Jersey for no purpose other than to delay generic competition to J&J's product Zytiga. Given that U.S. District Court Judge Kevin McNulty in the District of New Jersey presided over that litigation for three years, took evidence at a two-week long bench trial, reviewed reams of evidence relevant to Plaintiffs' claims in these cases, and issued a lengthy opinion on the patentability of Zytiga (in which he ultimately ruled *against* Defendants), the interests of efficiency, judicial economy, fairness, and justice are best served by transfer.<sup>1</sup>

Accordingly, while Defendants welcome consolidation of these four cases, that non-opposition should not prejudice the pending motion to transfer. Defendants do not withdraw their motion to transfer, or otherwise abandon or waive their position that these cases should be heard in the District of New Jersey. Whether the Court elects to consolidate the four cases, or to leave that decision for a future transferee court, nothing should prevent the Court from transferring to the District of New Jersey all four cases at this time.

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<sup>1</sup> Judge Tigar of the United States District Court for the Northern District of California recognized that these considerations weighed in favor of transfer to the District of New Jersey of a *qui tam* lawsuit alleging that Defendants made material misrepresentations and omissions to the U.S. Patent and Trademark Office in an effort to fraudulently procure the '438 Patent and exclude generic entry of abiraterone acetate. Order Granting Motion To Transfer Venue, *United States of America et al. v. Janssen Biotech, Inc. et al.*, No: 2:19-cv-12107-KM-JBC (D.N.J. Apr. 29, 2019), ECF No. 51. Upon transfer, the District of New Jersey assigned that case to Judge McNulty.

Dated: June 6, 2019

Respectfully submitted,

/s/ Gordon D. Todd

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 6, 2019, I caused the foregoing to be electronically filed with the Clerk of Court using the Court's Electronic Case Filing (ECF) system, which will then send a Notice of Electronic Filing (NEF) to the counsel of record in the above-captioned action.

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